

Federal Communications Commission

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Culpeper Broadcasting Corporation)	File No. EB-99-CF-014
WCVA)	
Culpeper, VA)	NAL/Acct. No. X3234001

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 7, 2000

Released: February 7, 2000

By the Enforcement Bureau: Columbia Office

I. INTRODUCTION

1. This is a Notice of Apparent Liability for monetary forfeiture issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, (the "Act") 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules (the "Rules"), 47 C.F.R. § 1.80, to Culpeper Broadcasting Corporation, licensee of WCVA, Culpeper, Virginia for willful violation of Sections 73.49 and 73.1560(a) of the Rules, 47 C.F.R. § 73.49, failure to maintain effective locked fence around the base of each antenna having radio frequency potential at the base, and § 73.1560(a), failure to maintain power within 90% to 105% of authorized. The appropriate amount of forfeiture for this violation is determined to be nine thousand dollars (\$9,000).

II. BACKGROUND

2. Station WCVA, licensed to Culpeper Broadcasting Corporation, was inspected on November 16, 1999 by Agent James Walker from the Commission's Columbia, Maryland Field Office. During that inspection, it was discovered that several vertical boards were missing from the fence enclosing the base of the antenna tower. When a station staff member was unable to locate a key to the gate, he swung the hinge side of the gate away from the fence. His ease in moving the gate and apparent confidence that it would move, indicated to the inspector that he had prior knowledge that the gate hinges were not secured to the fence. Each of these deficiencies would allow relatively easy access to the shunt excited antenna tower, which has radio frequency potential at the base.

3. Also during that inspection, it was determined that the station was operating at 942 watts (138% of the authorized 680 watts). There was a memo posted on the station's transmitting equipment explaining how to calculate the power and specifying the authorized power of 680 watts, as well as the upper and lower limits.

4. A Notice of Violation was issued on November 23, 1999 detailing these and other violations noted. In a reply received December 9, 1999, Culpeper Broadcasting Corporation states

that the fence has been repaired and that operators will be re-trained “to better understand the significance of the findings after taking the transmitter readings.”

III. DISCUSSION

5. Section 73.49 of the Rules requires that antennas having radio frequency potential at the base be enclosed within an effective locked fence or other enclosure. Culpeper Broadcasting Corporation failed to have WCVA's antenna enclosed within an effective locked fence or other enclosure on at least November 16, 1999. The licensee's representative indicated, by a statement and his actions, a prior knowledge that the fence was not secure.

6. Section 73.1560(a) requires that AM broadcast stations maintain the antenna input power within 90% to 105% of the authorized power. The presence of clear instructions posted on the transmitting equipment detailing the limits of the operating power and how to determine it is evidence that the licensee was aware of the requirement.

7. Based on the evidence before us, we find that Culpeper Broadcasting Corporation operated in willful¹ violation of Sections 73.49 and 73.1560(a) of the Rules. The Commission's Forfeiture Policy Statement 12 FCC Rcd 17087 (1997), (“Policy Statement”), sets the base amounts for these violations at seven thousand dollars (\$7,000) for the fencing violation and four thousand dollars (\$4,000) for the operating power violation. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) that include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and statutory factors to the instant case, we believe that a monetary forfeiture in the amount of nine thousand dollars (\$9,000) is warranted. This amount reflects a reduction for the violation of section 73.1560(a), overpower, of 50% due to the station's history of compliance. However, due to the safety issue concerning the lack of tower base protection, the base amount of seven thousand dollars (\$7,000) for violation of Section 73.49 is appropriate.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, Culpeper Broadcasting Corporation is hereby NOTIFIED of its APPARENTLY LIABILITY FOR A FORFEITURE in the amount of nine thousand dollars (\$9,000) for violating Sections 73.49 and 73.1560(a) of the Commission's Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D) and the guidelines enumerated in the Policy Statement.

9. IT IS FURTHER ORDERED THAT, pursuant to Sections 1.80(f)(3) and (h) of the Commission's Rules, 47 C.F.R. §§ 1.80(f)(3) and (h), within thirty (30) days of the date of release of

¹Section 312(f)(1), which also applies to Section 503(b), provides: “the term ‘willful’, when used with reference to the Commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission, authorized by this Act or by a treaty ratified by the United States.” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387(1991).

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this NOTICE OF APPARENT LIABILITY, Culpeper Broadcasting Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written response showing why the forfeiture should be reduced or not imposed. Any written response must include a detailed factual statement and supporting documentation.² Forfeitures shall be paid by check, money order, or credit card, with the appropriate documentation, made payable to the Federal Communications Commission.³ The remittance should be marked "NAL/Acct. No: X3234001", and mailed to the following address:

Federal Communications Commission
P.O. Box 73482
Chicago, IL 60673-7482

Send or mail any written responses regarding the reasons why the forfeiture should be reduced or not imposed to:⁴

Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, D.C. 20554
ATTN: Enforcement Bureau
Technical and Public Safety Division

Any written response should be marked "NAL/Acct.No: X3234001", and should focus on the mitigating factors outlined in the Policy Statement and Section 503 of the Act.

10. IT IS FURTHER ORDERED THAT this notice shall be sent, by certified mail, return receipt requested, to Culpeper Broadcasting Corporation, c/o Robert A. DePont, 140 South Street, Annapolis, MD 21404. A copy shall be sent, by first class mail, to Culpeper Broadcasting Corporation, P.O. Box 699, Culpeper, VA 22701.

FEDERAL COMMUNICATIONS COMMISSION

Charles C. Magin
District Director
Columbia Office

²Claims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three-year period.

³Requests for payment under installment plans should be mailed to: Chief, Credit & Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules. Contact Chief, Credit & Debt Management Center at (202) 418-1995 for more information on payments by credit card.

⁴For example, you must support your claim that you qualify as a small business and may therefore be eligible for a potential reduction in the amount of this forfeiture pursuant to the Small Business Regulatory Enforcement Fairness Act, Pub. L. 104-121, 110 Stat. 858 (1996). If you have any questions on this subject, please contact the Commission's Office of Communications Business Opportunities at (202) 418-0990.